

SUPPORT FOR THE AMENDMENTS

Applicants have corrected an error in claim dependency as a result of the prior incorporation of the limitations of claim 13 into claim 1. As claim 14 was previously dependent on claim 13 and all of the limitations of original claim 13 are now in claim 1, no new issues would be raised before the examiner by entry of applicants' amendment. No new matter would be added to this application by entry of this amendment. Entry of applicants' amendment and full consideration thereof at this stage of prosecution is respectfully requested

Upon entry of this amendment, claims 1-10 and 14-19 will remain active in this application.

REQUEST FOR RECONSIDERATION

The claimed invention is directed to a food product containing a diacylglycerol oil and sodium stearyl lactylate.

Diglyceride oils have received interest as having beneficial health effects and are an oil which is not stored as fat. Baked goods containing oils typically rely on the formation of an oil-in water emulsion at some stage of preparation. Techniques for forming stable oil-in-water emulsions of diglyceride containing compositions are still sought.

The claimed invention addresses this problem by providing a food product comprising a diacylglycerol oil and sodium stearyl lactylate. Applicants have discovered that sodium stearyl lactylate provides for a more stable oil-in-water emulsion for diglyceride oils and for improved crumb softness in diglyceride containing food products. A food product comprising a diglyceride oil and sodium stearyl lactylate having improved emulsion stability or improved crumb softness is nowhere disclosed or suggested in the cited references of record.

The rejection of claims 1-10 and 14-19 under 35 U.S.C. §103(a) over Goto et al. EP 0990391A is respectfully traversed.

Goto et al. fail to disclose or suggest that a food product containing a diacylglycerol and sodium stearyl lactylate would exhibit improved oil-in-water emulsion stability resulting from such a combination or improved crumb softness.

Goto et al. discloses a oil or fat composition as an emulsified oil-in-water type emulsion (example (1)) as well as baked cookies comprising a diacylglycerol, flour, sugar, egg, table salt, baking powder but no emulsifier (example 5)). There is no disclosure of the combination of diacylglycerol with sodium stearyl lactylate nor the improved emulsion stability and crumb softness resulting from such a combination.

As evidence of an improved emulsion stability resulting from the combination of diacylglycerol and sodium stearyl lactylate the examiner's attention is again directed to Figure 1C of applicants' specification in which the volume of emulsion interface was measured relative to emulsifier concentration for a number of high HLB emulsifiers. The emulsion interface volume was consistently higher with the emulsifier sodium stearyl lactylate (SSL) as compared with emulsifiers of PS60, PS80 and EtMono. The discovery of an **improved emulsion stability** by selection of sodium stearyl lactylate with diacylglycerol is not suggested by Goto et al.

Further, applicants have discovered improved dough properties by use of SSL in an oil-based cookie dough. The examiner's attention is again directed to paragraph [0078] appearing on page 36 of the specification in which it is reported that a dough containing diacylglycerol and SSL was more easily handled and machined than a diacylglycerol dough using other emulsifiers such as deoiled lecithin. Positive changes in texture were also observed. Thus, by selection of SSL with diacylglycerol oil, applicants have discovered improved crumb softness.

Page 3 of the official action dismisses applicants' demonstration of improved emulsion stability and dough properties as not a claim elements and therefore not addressed or considered. A compound and all its properties are inseparable (*In re Papesch*, 315, F. 2d 381, 391, 137 USPQ 43, 51 (CCPA 1963) M.P.E.P. §§ 2141.02 V) and accordingly it would be reversible error for the examiner not to consider applicants' evidence of improved emulsion stability and crumb softness.

Moreover, the examiner's attention is directed to page 6, paragraph 0023 and page 36, paragraph 0078 which identify improved emulsion stability for the combination of SSL and diglyceride and improved crumb softener properties for the combination of SSL and diglyceride. Such statements **must be treated as objectively true**, unless the examiner has

reasons, based on sound scientific principles, to doubt the objective truth of applicants' specification.

The burden is on the Patent Office to provide reasons based on scientific principles, to doubt the objective enablement of Applicant's claimed invention. Applicant's disclosure **must be taken as in compliance** with the enabling requirement under 35 USC 112, first paragraph, **unless, there is reason to doubt the objective truth of the statements contained therein.** (*In re Marzocchi*, 169 USPQ 367, 369 (CCPA 1971)).

Thus, applicants disclosure and demonstration is believed to be commensurate in scope with the claimed invention.

Page 3 of the official action suggests that selection of emulsifier to obtain optimum result would only require routine experimentation and selection of such to be a result effective variable which can easily be determined by one of ordinary skill in the art.

Applicants note that **only known result effective variables** maybe optimized..

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie* 195 USPQ 6, (CCPA 1977) (MPEP 2144.05(b))

Applicants further note that the art of record fails to identify emulsion **stability** as a variable which would be affected by the specific identity of the emulsifier and thereof is not a know result effective variable capable of being optimized. Thus, contrary to any assertions made in the official action, the claimed selection of SSL is not the result of optimization and therefore is not obvious.

Since Goto et al. merely describe the use of a generic emulsifier in the formation of an oil-in-water emulsion, there is no suggestion that SSL in combination with a diglyceride oil would provide enhanced emulsion stability or improved dough characteristics. Applicants have already demonstrated improved emulsion stability relative to other emulsifiers such that

applicants' observation of improved emulsion stability is not suggested by the cited reference.

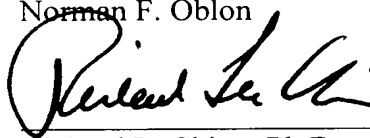
In view of the failure of the cited reference to suggest an improved emulsion stability or improved dough properties resulting from the combination of SSL and a diglyceride oil, the claimed invention is not obvious from this reference and withdrawal of the rejection under 35 U.S.C. 103(a) is respectfully requested.

Applicants submit that this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

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